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CONTINENTAL D.I.A. DIAMOND PRODUCTS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CONTINENTAL D.I.A. DIAMOND
PRODUCTS, INC., a California corporation,

Plaintiff,

vs.

DONG YOUNG DIAMOND INDUSTRIAL
CO., LTD., a South Korean company,
DONGSOO LEE, an individual, and DOES 1-
10, inclusive,

Defendants.

AND RELATED COUNTERCLAIMS.

Case No. CV 08-2136 SI

**STIPULATION AND [PROPOSED]
ORDER FOR THE FILING OF
CONTINENTAL D.I.A. DIAMOND
PRODUCTS, INC.'S FIRST AMENDED
COMPLAINT AND TO MODIFY THE
PRETRIAL SCHEDULE**

Judge: Honorable Susan Illston

Complaint Filed: April 24, 2008

Trial Date: February 16, 2010

STIPULATION

WHEREAS, Continental D.I.A. Diamond Products, Inc. (“Continental” or “Plaintiff”) asserts that through discovery in this action it has learned of new facts in support of existing claims and new facts warranting the assertion of additional claims against Defendants Dong Young Diamond Industrial Co., Ltd. and DongSoo Lee (collectively “Defendants”) thereby necessitating the amendment of its Complaint.

WHEREAS, the Court held a case management conference on May 26, 2009 and was advised that Continental would be filing an amended complaint and that Continental and Defendants (collectively the “parties”) would likely agree to a modest extension of the current fact and expert discovery deadlines in relation thereto. *See* Dkt. Nos. 95-96.

WHEREAS, Continental promptly provided Defendants with a draft First Amended Complaint after the May 26, 2009 Case Management Conference.

WHEREAS, after reviewing Continental’s proposed First Amended Complaint, Defendants agreed to allow Continental leave to file its First Amended Complaint with the Court.

WHEREAS, the parties believe that they will require an additional forty-five (45) days to complete fact and expert discovery due to the filing of amended pleadings; as well as to conduct third party discovery and depositions in multiple jurisdictions throughout the United States, and resolve several outstanding disputes over Defendants’ efforts to respond to Continental’s discovery.

WHEREAS, the parties believe that this is only the second significant modification of the Court’s Pretrial Scheduling Order sought by the parties. *See* Declaration of Jeffrey M. Ratinoff filed concurrently herewith. Previously, the parties obtained a ninety-day continuation of all dates in the Pretrial Scheduling Order to facilitate settlement discussions and to avoid prejudicing the Parties’ discovery efforts and trial preparations during such discussions. *Id.*

WHEREAS, the filing of Continental’s First Amended Complaint and the parties’ request to extend the fact and expert discovery deadlines is not for the purpose of delay, and the parties believe that this reasonable extension of time will not affect any of the other dates set by the Court’s most recent Pretrial Scheduling Order, including the February 16, 2010 trial date, and is in the interests of fairness and in the interests of justice. *See* Declaration of Jeffrey M. Ratinoff filed

1 concurrently herewith.

2 ACCORDINGLY, the parties, by and through their undersigned counsel, HEREBY
3 STIPULATE as follows:

- 4 1. Continental may file its First Amended Complaint.
- 5 2. Upon the Court's approval of this stipulation, Continental will file its First Amended
6 Complaint within five (5) court days thereafter.
- 7 3. Per Fed. R. Civ. Pro. 15(a)(3) Defendants' response to Continental's First Amended
8 Complaint will be due ten (10) court days after the filing of Continental's First Amended
9 Complaint.
- 10 4. In order to avoid prejudicing the parties' discovery efforts and trial preparations, and
11 to allow the parties sufficient time to complete fact and expert discovery, the parties agree and
12 respectfully request that the current pre-trial scheduling order (*See* Dkt. Nos. 44-2, 78, 95-96) be
13 modified as follows:
- 14 • The fact discovery cut-off, which is currently set for August 14, 2009, is extended to
15 September 28, 2009;
 - 16 • The deadline to designate experts, which is currently set for August 28, 2009, is
17 extended to October 12, 2009;
 - 18 • The deadline to designate rebuttal experts, which is currently set for September 19,
19 2009, is extended to November 5, 2009; and
 - The expert discovery cut-off, which is currently October 16, 2009 is extended to
November 30, 2009.

20 **IT IS SO STIPULATED BY THE PARTIES.**

21
22 Dated: June 16, 2009

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.

23 */s/ Jeffrey M. Ratino*

24 By: JEFFREY M. RATINOFF

25 Attorneys for Plaintiff and Counter-Defendant,
26 Continental D.I.A. Diamond Products, Inc.

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1
2 Dated: June 16, 2009

PRETI FLAHERTY BELIVEAU & PACHIOS, LLP

3 /s/ Alfred C. Frawley

4 By: ALFRED C. FRAWLEY

5 Attorneys for Defendants and Counterclaimants,
6 Dong Young Diamond Industrial Co., Ltd., and Dongsoo Lee

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9 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

10
11
12 Dated: _____



13
14 THE HONORABLE SUSAN ILLSTON
15 UNITED STATES DISTRICT COURT JUDGE

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17 4637194v.1